

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT
CAUSE NO.

VICTORIA PIERCE,)
)
Plaintiff,)
)
v.)
)
FORT WAYNE HEALTHCARE)
GROUP LLC, d/b/a GREY STONE)
HEALTH, a/k/a GREY STONE)
HEALTH AND REHABILITATION)
CENTER,)
)
Defendant.)

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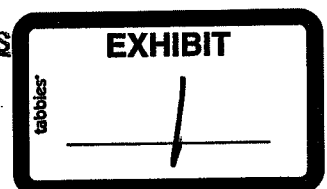
FILED BY
CERTIFIED OR REGISTERED MAIL
T.R.B (P)

NOV 23 2016

COMPLAINT

Plaintiff, by counsel, alleges against Defendant that:

1. The plaintiff is Victoria Pierce ("Plaintiff"), a Black/African American female, and a former employee of Defendant residing at all material times to this Complaint in Fort Wayne, Allen County, Indiana.
2. The defendant is Fort Wayne Healthcare Group LLC, d/b/a Grey Stone Health, a/k/a Grey Stone Health and Rehabilitation Center, a company doing business at 10445 Dupont Road, Fort Wayne, Indiana 46845 (Allen County). Defendant's home office is located at 26691 Richmond Rd, Bedford Heights, Ohio 44146. At all material times to this Complaint, the Defendant was an "employer" for the purposes of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 (e) et seq. ("Title VII"), the Americans with Disabilities Act of 1990, 42 U.S.C. § 12111, et seq. ("ADA"), and 42 U.S.C. § 1981.



3. The Plaintiff filed a Charge of Discrimination on or about June 8, 2016, EEOC No. 24D-2016-00316, a copy of which is attached hereto, incorporated herein, and made a part hereof as exhibit “A”. The EEOC issued its Dismissal and Notice of Rights/Notice of Suit Rights on August 25, 2016, a copy of which is attached hereto and made apart hereof as exhibit “B”. All administrative remedies have been exhausted and all jurisdictional prerequisites have been met for the filing of this lawsuit.
4. Plaintiff was employed by Defendant from on or about March 2016 until her wrongful termination on or about May 16, 2016. She held the position of Certified Nursing Assistant (CNA) at the time of her separation of employment and performed within the reasonable expectations of the employer at all material times to this Complaint.
5. In March 2016, Plaintiff informed her supervisor of her HIV medical diagnosis.
6. On May 13, 2016, Plaintiff was sent home when she became ill, and the following day, she called off work due to illness.
7. Plaintiff submitted a doctor’s note for her May 14 absence, but her employment was terminated on May 16, 2016.
8. When Plaintiff met with the Director of Nursing (“DON”) and the Administrator, the Administrator confirmed that Plaintiff had only one prior call off after she submitted her doctor’s note for her absence. During the meeting, Plaintiff was informed of several write-ups in her personnel file.
9. When Plaintiff denied any knowledge of the write-ups, another meeting was scheduled for May 17, 2016.

10. During the May 17, 2016 meeting the DON stated, "You should not be working in health care with these issues." The DON was referring to Plaintiff's HIV status. Plaintiff informed the DON that the Administrator and the third shift supervisor were aware of Plaintiff's health issues, but Plaintiff's employment was not reinstated.
11. Plaintiff contends that the proffered reason for termination was false and pretextual. Plaintiff asserts that she has been discriminated against, retaliated against and terminated on the basis of her HIV status, constituting a disability/perceived disability/record of impairment in violation of Plaintiff's federally protected rights under the ADA.
12. In the alternative, Plaintiff alleges that her termination was because of her race, Black/African American, and that similarly situated white probationary employees were not terminated for alleged attendance violations.
13. Defendant's discrimination and retaliation on the basis of Plaintiff's disability and race was the direct and proximate cause of Plaintiff suffering the loss of her job and job related benefits including income, and subjected Plaintiff to inconvenience, emotional distress, and other damages and injuries.
14. Defendant's discriminatory conduct, furthermore, was intentional, knowing, willful, wanton, and in reckless disregard of Plaintiff's federally protected rights under the ADA, Title VII and § 1981. Plaintiff is entitled to receive punitive and compensatory damages against the Defendant.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendant for compensatory damages, punitive damages, reasonable attorney's fees and costs, and for all other

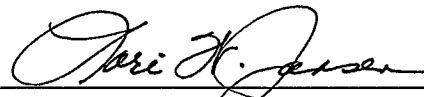
just and proper relief in the premises.

JURY DEMAND

Pursuant to Rule 38 of the Indiana Rules of Trial Procedure, Plaintiff demands a trial by jury in this action.

Respectfully submitted,

CHRISTOPHER C. MYERS & ASSOCIATES



Christopher C. Myers, #10043-02
Lori W. Jansen, # 19417-57
Skyler Spurling-Newsome, #33833-02
809 South Calhoun Street, Suite 400
Fort Wayne, IN 46802-2307
Telephone: (260) 424-0600
Facsimile: (260) 424-0712
E-mail: cmyers@myers-law.com
ljansen@myers-law.com
Attorneys for Plaintiff

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☒ FEPA

EC-0123-A16

☒ EEOC

24D-2016-00316

City of Fort Wayne Metro Human Relations Commission

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Home Phone (Incl. Area Code)

Date of Birth

Victoria Pierce

(260) 203-6397

Street Address

City, State and ZIP Code

7835 Gathings Drive, Fort Wayne, IN 46816

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

No. Employees, Members

Phone No. (Include Area Code)

GREY STONE HEALTH AND REHABILITATION CENTER

15 - 100

(260) 205-8584

Street Address

City, State and ZIP Code

10445 Dupont Road, Fort Wayne, IN 46845

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☒ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE
 Earliest Latest

05-16-2016

05-16-2016

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I am a qualified black individual who worked as a Certified Nursing Assistant ("CNA") for Grey Stone Health & Rehabilitation Center until I was terminated during my probationary period on May 16, 2016. In March 2016, I informed my employer about my medical diagnosis. In May 2016, I was denied my time off requests to move and my replacement coverage. On May 13, 2016, I was sent home for being ill. The next day, I called off of work. On May 16, 2016, my employment was terminated. Shortly after, I met with Assistant Director of Nursing, Lori and Administrator, Fred. Fred confirmed I only had one prior call off, after I submitted my doctor's note for my absence on May 14, 2016. I also learned that I had several write-ups in my personnel file. After denying any knowledge of these write-ups, a meeting was scheduled on May 17, 2016, with the Director of Nursing, Rachel. During the meeting, Rachel stated, "you should not be working in health care with these issues." I informed Rachel that Fred and third shift supervisor, Jim are aware of my health issues. However, my employment was not reinstated. I know that other probationary employees, white are not terminated for attendance violations. I also feel that my termination was a result of being perceived as disabled.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (month, day, year)

Jun 08, 2016

Date

Charging Party Signature

Ex. A

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☒ FEPA

EC-0123-A16

☒ EEOC

24D-2016-00316

City of Fort Wayne Metro Human Relations Commission

and EEOC

State or local Agency, if any

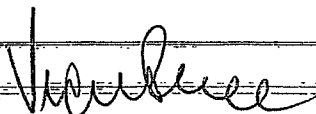
Based on the above, I believe I have been discriminated against on the basis of my race, black, in violation of Title VII of the Civil Rights Act of 1964, as amended. I also believe that I have been perceived as disabled in violation of the Americans with Disabilities Act Amendments Act of 2008.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Jun 08, 2016

Date

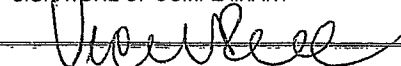


Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT



SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Victoria Pierce
7835 Gathings Drive
Fort Wayne, IN 46816

From: Indianapolis District Office
101 West Ohio St
Suite 1900
Indianapolis, IN 46204

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

24D-2016-00316

Frederick J. BruBaker,
Supervisor

(317) 226-7350

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

Enclosures(s)

On behalf of the Commission

Lloyd J. Vasquez
Lloyd J. Vasquez,
Acting Director

AUG 25 2016

(Date Mailed)

cc:

Patricia Weisberg
Attorney
WALTER HAVERFIELD
1301 E. 9th Street
Cleveland, OH 44114

Christopher Myers
809 S. Calhoun Street
#400
Fort Wayne, IN 46802

Ex. B